

## Ripon officials stop bulldozers from cutting levee for Stanislaus River floodplain restoration

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RIPON -- Unsure Tuesday night whether they had the authority to order the federal government not to cut through a river levee, city officials tried it anyway.

It worked. A U.S. Fish and Wildlife Service official halted the work shortly before it was scheduled to begin early Wednesday.

But while the city expressed surprise at the imminent, deliberate breach, a government official maintained that the city had had ample opportunity to comment.

Project officials want to break the Stanislaus River levee to allow periodic, natural flooding of habitat that is being restored to native condition.

The city fears for other property, including new homes going in atop a bluff. "Fast-moving floodwater could erode away the bluff, causing it to slough off and possibly endanger homes on the bluff and the people living in them," City Engineer Matt Machado said Wednesday.

The bluff has a secondary levee, but it is not designed to protect against rushing water, Machado said.

Another area of concern is Jack Tone Golf Course, which can take occasional flooding from the river, but not fast-moving water, the engineer said.

He said he had been talking with federal officials about the project for a month, and figured that they would be coming in with a plan and permit application.

Instead, the government lined up a contractor, who lined up earthmovers and prepared to start the work Wednesday. Machado said he found out about it, and he advised the City Council during its regularly scheduled meeting Tuesday night.

Startled council members made it clear that they did not want the levee disturbed without some assurance that there would be no future damage to public or private property in the city.

Short of sending police out to put a stop to the project, the City Council was not sure what to do. The solution turned out to be a strongly worded letter drafted by City Attorney Thomas H. Terpstra after the council meeting.

It read, in part: "This letter is to formally advise you that unless this work is delayed until proper authorization and permits are obtained, the city of Ripon will commence appropriate legal action to enjoin the unauthorized activities."

Machado said: "We need to know what their plans are for protecting surrounding property from flowing water, for preventing erosion of the bluff."

The habitat restoration encompasses 35 acres, sold to the Fish and Wildlife Service by farmer Merlin Mohler several years ago. Mohler, who also is a licensed contractor, attended Tuesday night's council meeting and confirmed that he had been hired to cut a 200-foot breach in the levee.

He advised the council that he had to start work at 7 a.m. to comply with his contract.

The Fish and Wildlife Service did not hesitate to stop him.

"This morning, waiting on the fax machine at 7 a.m. was a letter from the city attorney," said Bob Parris, assistant manager of the San Luis National Wildlife Refuge, which is administering the riverside habitat restoration in Ripon.

"We put the project on hold until we have a chance to address the city's concerns," he said. Project officials want to be on good terms with the city, he added.

Still, he said, Ripon had been asked for comment when the government proposed the project, in a 70-page report, and later during two environmental studies, one to satisfy federal law and one to satisfy California law.

At each stage, Parris said, project officials asked for comment from the city and other potentially interested parties in the public and private sectors.

"The city didn't provide any written comments on the (California) version, but it did on the (federal) study," he said.

Fish and Wildlife responded with a letter addressing the city's concerns, he said, and heard no more.

Fish and Wildlife and its partners, the state Department of Fish and Game, the California Water Fowl Association and the Army Corps of Engineers, thought they were set to go with the levee breach.

It is Phase 2 of what is officially called the Riparian Restoration Plan for the Mohler Tract on the Stanislaus River.

The first phase involved planting native trees, bushes and grasses on acreage "to give it a jump-start on catching up with the riparian habitat owned by the Corps of Engineers" to the east, Parris said. That work has been completed.

City officials said they have no problem with flooding the federal property. It is the possible uncontrolled flooding of surrounding property that concerns them.

"If it were you and me," Councilman Mike Restuccia said, "we would have to get permits issued by the city and conform with requirements set by the city.

"When it's the federal government doing it, can they break local laws? Do they have the power to just ignore state laws and city ordinances? We don't know."

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